

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM A. GROSS CONSTRUCTION
ASSOCIATES, INC.,

X
07-CV-10639-LAK

Plaintiff,

- against -

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Complaint

Defendant.

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Third-Party Plaintiff,

- against -

CAULDWELL-WINGATE COMPANY, LLC,

Third-Party Defendant.

X

For its third-party complaint, against the above-named third-party defendant, American Manufacturers Mutual Insurance Company alleges the following.

Jurisdiction over Third-Party Action

1. This court has supplemental jurisdiction over this third-party action, under 28 USC 1337. The third-party claims are so related to the claims in the main action as to form part of the same case or controversy.

2. This court also has diversity jurisdiction over this third-party action, under 28 USC 1332. The amount in controversy exceeds the jurisdictional threshold, and there is diversity of "citizenship" between third-party plaintiff (Illinois) and the third-party defendant (non-Illinois), as is more fully set forth below.

Parties to Third-Party Action

3. Third-party plaintiff, American Motorists Insurance Company (hereinafter "American") is a corporation. American is incorporated under the laws of the state of Illinois and maintains its principal place of business in Illinois.

4. Third-Party defendant, Cauldwell-Wingate Company, LLC ("Cauldwell"), is believed to be a limited-liability company organized under the laws of Delaware, with its principal place of business in New York, and with none of its constituent members citizens of the same state as third-party plaintiff.

American's First Claim against Cauldwell

5. The plaintiff in this action, William A. Gross Construction Associates, Inc. ("Gross"), has asserted claims for more than \$2.6 million against defendant, American.

6. Plaintiff Gross's claims are set forth in its complaint, now an amended complaint, which is incorporated herein, purely for the purposes of this third-party action, without conceding the truth or validity of any of the plaintiff's allegations or claims. Gross's amended complaint will be referred to herein simply as the "complaint".

7. As appears more fully in the complaint, plaintiff Gross's claims against American are based on the fact that American was the surety for the third-party defendant, Cauldwell.

8. More particularly, American was Cauldwell's surety on a certain Labor-and-Material Payment Bond (no. 3SE030676) dated on or about December 27, 2002, and given in connection with a contract between Cauldwell and the Dormitory Authority of the State of New York ("DASNY") pertaining to the new Bronx Criminal Court Complex.

9. Because American was merely the surety on that bond, and Cauldwell was the principal obligor, American will be entitled to judgment-over against Cauldwell in the event any liability is imposed on American by reason of plaintiff Gross's claims against American in this action.

American's Second Claim against Cauldwell

10. As an inducement for American to act as Cauldwell's surety, Cauldwell expressly agreed to indemnify American for all sums paid or required to be paid by American as Cauldwell's surety, said agreement being contained in a written indemnity agreement dated on or about December 27, 2002.

11. Pursuant to that indemnity agreement American will be entitled to judgment-over against Cauldwell in the event any liability is imposed on American in this

action, which is brought against American as Cauldwell's surety.

Request for Judgment

Wherefore, third-party plaintiff, American Manufacturers Mutual Insurance Company, respectfully requests judgment-over against third-party defendant, Cauldwell-Wingate Company, LLC, for any liability imposed on American in this action, plus costs and disbursements, and interest as allowed by law.

Dated: New York, NY
December 17, 2007

ZICHELLO & McINTYRE, LLP
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Plaintiff American Manufacturers Mutual
Insurance Company

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